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**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN, MALAYSIA
(BAHAGIAN DAGANG)
GUAMAN SIVIL NO. WA-22IP-57-08/2019**

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BETWEEN

TRAMONTINA S/A CUTELARIA

... PLAINTIFF

AND

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GIANT ACE SDN BHD

... DEFENDANT

(NO. SYARIKAT: 424650-P)

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GROUND OF JUDGEMENT

INTRODUCTION

- [1] In one of those rare instances, this Court has allowed the Plaintiff's O.14 application. Aggrieved, the Defendant filed this appeal. Below are my 25 Grounds in coming to such decision.

BACKGROUND

[2] In Encl 43, the Plaintiff prayed for the injunctive and declaratory orders it is seeking in its main Suit against the Defendant to be granted summarily under O.14 of the Rules of Court 2012 ("ROC"), citing the Defendant's unmeritorious and the absence of bona fide defences against the Plaintiff's claims and that there exist no issues to be tried as its main grounds of the application. The Plaintiff argued that it had provided sufficient evidence to proof that the Defendant had sold and offered for sale products bearing the Plaintiff's registered Trademarks and Plaintiff's marks which are confusingly similar to the Plaintiff's registered Trademarks and Plaintiff's other marks, thereby proving its case against the Defendant for trademark infringement. Consequentially, the Plaintiff argued that it had also succeeded in proving its case against the Defendant for the tort of passing off.

40 **Plaintiff's case**

[3] The Plaintiff is a company incorporated by Valentin Tramontina, of which the Plaintiff is named after, in 1911 under the laws of Brazil and has its business address also in Brazil. It produces about 18,000 products

45 ranging from home products to industrial products, which include kitchen utensils, home gardening tools, furniture and industrial tools, marketed in over 120 countries including Malaysia.

[4] The Plaintiff is the registered proprietor of numerous trademarks in
50 Malaysia as enumerated in Table A below:

TABLE A : Plaintiff's registered trademarks in Malaysia

| Trademark | Registration No. | Class | Registration date | Expiry date |
|---|------------------|-------|-------------------|-------------|
|  | 2011018847 | 8 | 25/10/2011 | 25/10/2021 |
|  | 2011018845 | 11 | 25/10/2011 | 25/10/2021 |
|  | 2011018844 | 20 | 25/10/2011 | 25/10/2021 |
|  | 2011018842 | 21 | 25/10/2011 | 25/10/2021 |

| | | | | | |
|--|------------|----------|---|-----------|-----------|
| | TRAMONTINA | 08016259 | 8 | 14/8/2008 | 14/8/2028 |
|--|------------|----------|---|-----------|-----------|

[5] The Plaintiff is also the registered owner of a trademark bearing
 55 registration no. 904393160 in Class 8 that was deposited at the Branding,
 Industrial Designs and Geographical Indications Board, Brazil, effective for
 the duration of 10/3/2017-10/3/2027 as below:

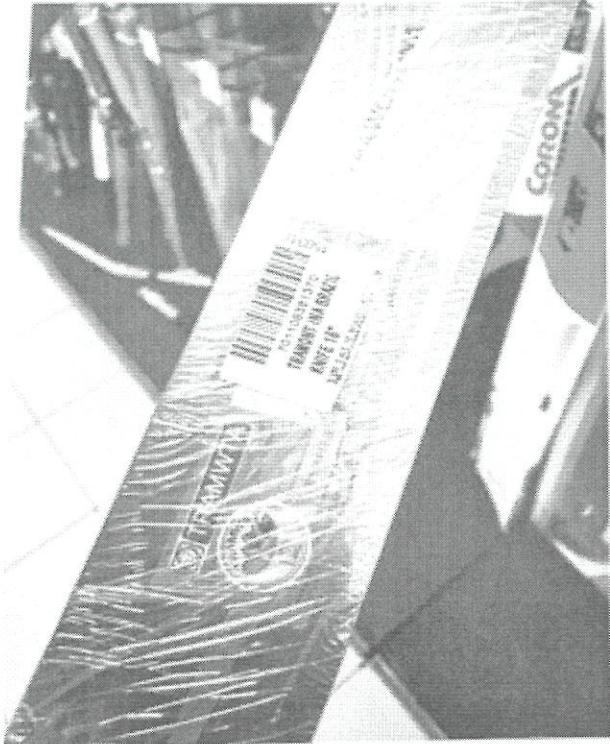


60 [6] In its affidavit in support of this application dated 8/12/2020 deposed
 by Guilherme Debiasi, Executive Director of the Plaintiff, the Plaintiff
 exhibited in Exhibits GD-4 and GD-5 copies of invoices issued to buyers in
 Malaysia for numerous dates within the period of 2011-2020 as proof that
 not only its products had been widely sold to the Malaysian consumers, but

65 its products had enjoyed substantial goodwill to the extent that the Malaysian public has associated those products with the Plaintiff.

[7] The Plaintiff had received information that the Defendant has been selling and distributing knives and cutlery bearing the Plaintiff's registered
70 trademarks and marks which are confusingly similar to the Plaintiff's registered trademarks ("Defendant's Infringing Products") at the Defendant's chain of hardware stores. Following that, a trap purchase was done by the Plaintiff on 23/5/2019 at one of the Defendant's store.

75 [8] The Defendant's Infringing Products that were obtained through the trap purchase and the receipt of that purchase were exhibited as GD-6 at pages 48-50 of the Plaintiff's affidavit as reproduced below:



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[9] The Plaintiff further averred that the Defendant's Infringing Products-

- (i) bear marks which are identical and/or confusingly similar to the Plaintiff's registered trademarks such as "TRAMONTINA", "TRAMONTINA", "TRAWONTINA", TRAMWTA" and "TRAMWAT";
- (ii) are affixed with a label bearing the Plaintiff's name – "TRAMONTINA S.A CUTELARIA", including the Plaintiff's address;
- (iii) are marked with "Made in Brazil";
- (iv) are affixed with barcode sticker stating the goods as "TRAMONTINA Brazil Knife";

[10] The receipt issued by the Defendant during the trap purchase described the Defendant's Infringing Machete as 'TRAMONTINA Brazil Knife 18' , exhibited in GD-6 at page 49, as shown in blue arrow below:



Defendant's case

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[11] The Defendant carries out a chain of well-known hardware stores known as "Ace Hardware", trading over 20,000 types of household items and

goods which were sourced or purchased from its agents, whom on their own would be responsible on any issues pertaining to the intellectual 110 proprietorship of those items and goods. Any machetes sold at the Defendant's premises are the types and kinds that could be obtained at any other stores throughout Malaysia.

[12] The Defendant averred that the machetes sold at its premises do 115 not bear names similar to the Plaintiff's products. While the Defendant admitted that it sells machetes bearing the name/mark "TRAWMTA", it is the Defendant's averment and pleading that the said name/mark is not identical and/or not confusingly similar to the Plaintiff's registered trademarks. The Defendant further averred that it does not sell any of the Plaintiff's products, nor 120 any product bearing the mark "TRAWONTINA" at any of its stores. It is the Defendant's averment that it does not have any knowledge about products with the trademark "TRAWONTINA" until it was served with the current Suit by the Plaintiff.

125 [13] The Defendant pleaded that being a well-known hardware chain stores, it has a reputation to be maintained and as such it will never commit any act of trademark infringement or passing off against the Plaintiff's

products, or against any other products belonging to any other persons.

Having such a reputation, there is no necessity and no reason for the

130 Defendant to ride on the Plaintiff's reputation, as alleged by the Plaintiff.

[14] It is the Defendant's averment that if the Plaintiff's machetes bearing

the TRAMONTINA trademark is a well-known brand/mark, no consumer or

purchaser would be confused with the machetes bearing the mark

135 "TRAWMTA" that are being sold at the Defendant's stores, as both are

dissimilar products and bear totally different names.

[15] The Defendant has been selling the machetes bearing the mark

"TRAWMTA" without any knowledge of them having passed off as the

140 Plaintiff's machetes and infringed the Plaintiff's trademark. Thus, it had

immediately ceased the sale of the alleged Defendant's Infringing Products

at its stores upon having received the Plaintiff's Suit.

[16] Relying on ***Fisher v Bell [1960] 3 WKR 919***, the Defendant argued

145 that as its business is a self-serving supermarket without any advertisement

or inducement by itself or its staff or agents to prospective buyers to

purchase the Plaintiff's products, the display of the Plaintiff's products at its

premises was not an offer of sale but an invitation to treat. Further, the Plaintiff's trap purchaser was the one who was making an offer and the acceptance was by the Defendant's cashier at the counter : ***Pharmaceutical Society of Great Britain v Boots Cash Chemists [1953] 1 QB 401***. It follows, therefore that the Plaintiff's application for summary judgement cannot be allowed as the Defendant must be given an opportunity to cross-examine the Plaintiff's trap purchaser at a full trial.

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[17] The Defendant argued that this Court cannot allow the Plaintiff's summary judgement application as it had shown the following triable issues that must be determined by this Court at a full trial:

- 160 (i) the proprietariness of the trap purchase, including whether it was actually been carried out, if so whether it was actually carried on the date alleged by the Plaintiff, the manner as to how the Plaintiff obtained the receipt as shown in exhibit GD-6 that was alleged to have been issued by the Defendant during the trap purchase, which include the possibility of it being a forged receipt;
- 165 (ii) the similarities and differences of the characteristics of the Plaintiff's products and the alleged Defendant's Infringing Product;

(iii) the difference in the nature of the Plaintiff's and the Defendant's business;

170 (iv) the Defendant is not the Plaintiff's competitor hence no reason for the Defendant's alleged act of passing off and infringement;

(vi) the Plaintiff's summary judgment application was premised on a trap purchase by a third party, who could have forged the receipt and wrongly presented in evidence before this Court as the Defendant's case of passing off and infringement stemmed from a person's thought process when making decision to purchase the Defendant's Infringing Machete, which must be established by the Plaintiff at a trial that would enable the Defendant to defeat the evidence through cross-examination;

180 (vii) damages to be awarded to the Plaintiff can only be proven at a trial; and

(viii) the receipt issued by the Defendant when the Defendant's Infringing Items were purchased by the Plaintiff which contained the words/marks "TRAMONTINA Brazil Knife" was based on the supplier's bar label. Those words that appeared on the receipt was as provided by the supplier, and thus this supplier must be called to give evidence at a trial.

FINDING

Preliminary Objection

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[18] The Defendant registered a preliminary objection to the Plaintiff's application premised on the Plaintiff's delay as the application was filed more than a year after the filing of its Writ, and it was filed after this Court having set down dates for trial of the main action.

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[19] In response, the Plaintiff sets out the chronological event that occurred between the time it filed the Writ to the time it filed this application. In essence, between 4/9/2019 (1 week after the filing of the Writ) to 18/9/2020 (3 months prior to the filing of this application) both parties were engrossed 200 with multiple amendments to their respective pleadings, apart from the closures of the legal services due to the Movement Control Order that took place from 17/3/2020. This Court had fixed trial dates on the request of the Plaintiff's counsel, cautious on the possibility of its current application being dismissed.

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[20] Upon perusal of this Court's Notes of Proceedings, it was further found that during a Case Management on 22/10/2020, the Plaintiff's counsel had

informed the Court in the presence of the Defendant's counsel that despite proceeding to file the documents in preparation of a full trial, the Plaintiff
210 would file a Summary Judgement application, which was filed only on 8/12/2020.

[21] This Court took cognizance of the Covid-10 pandemic situation at that point of time and that the Plaintiff is a company situated in Brazil. The
215 Plaintiff's affidavit in support of the application was only able to be filed some 2 weeks after the application was filed as the deponent was in Singapore and needed to go through the requisite Notarial Certification, which was obtained before the Notary Public in Singapore on 8/12/2020, the day when enclosure 43 was filed. The affidavit in support was filed on 17/12/2020.

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[22] Having considered all the circumstances above, this Court decided to overrule the Defendant's preliminary objection.

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Plaintiff's action is under the Trade Marks Act 1976

[23] It is the Plaintiff's case that as the act of the alleged infringement by
230 the Defendant was committed before the new Trademarks Act 2019 came
into force on 27/12/2019, the provisions of the old Trade Marks Act 1976,
particularly s. 38, applies. This Court agrees with this proposition as such is
clearly the legislative intent of s. 167(2) of the Trademarks Act 2019.

235 Trademark infringement

[24] The Plaintiff had provided proof that it is the registered proprietor of the
various trademarks as enumerated in paragraph 4 above, with the
production of the copies of the trademark registration certificates by the
240 relevant authorities in Malaysia and Brazil in exhibits GD-2 and GD-3
respectively of the Plaintiff's affidavit in support of its application herein.

[25] This Court accepts the Defendant's evidence and admission that it
sells machetes bearing the mark "TRAWMTA". This Court further accepts
245 the Defendant's evidence that the said "TRAWMTA" does not resemble and
is not identical to the Plaintiff's "TRAMONTINA" trademark. In terms of visual

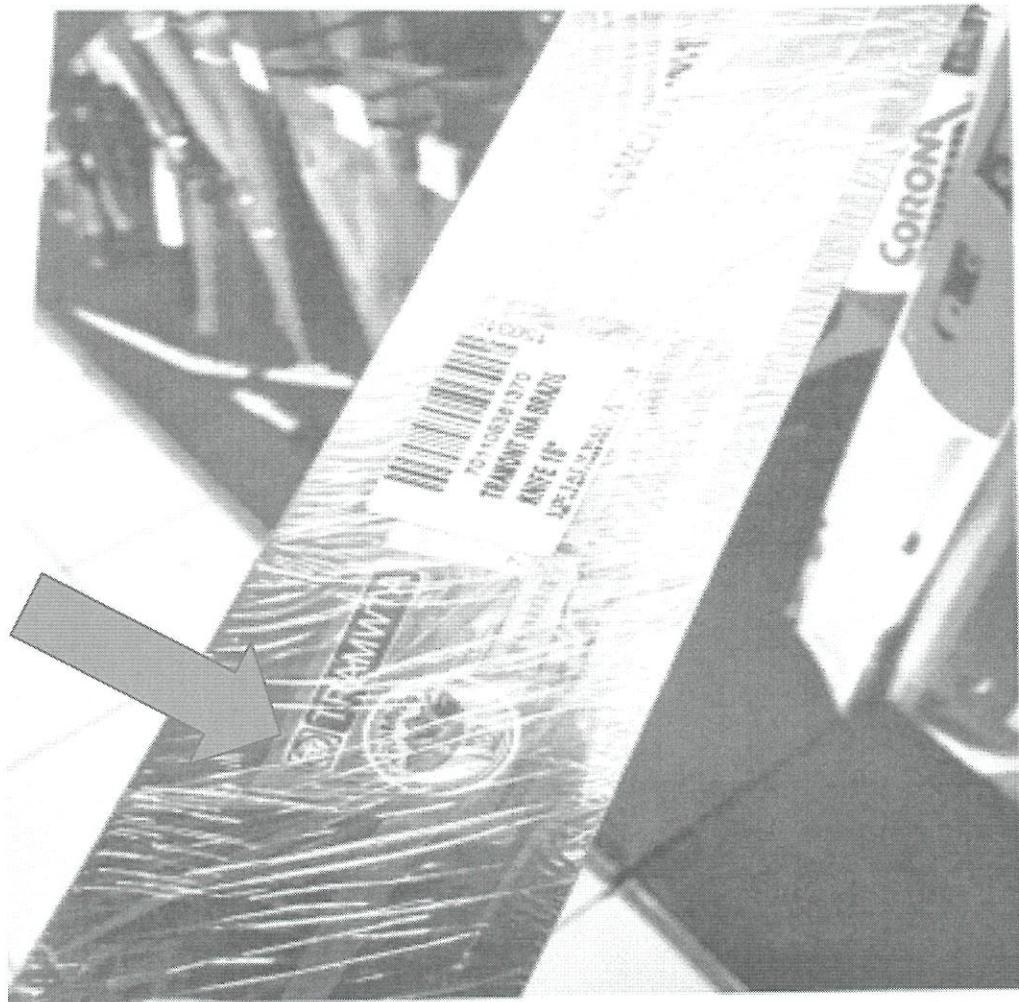
comparison, the Plaintiff's mark is longer than the Defendant's, and the outstanding "MON" is not present in the Defendant's mark. This Court found the marks differed aurally (see: ***Consitex SA v TCL Marketing Sdn Bhd***
250 [2008] 3 MLJ 574; [2008] 5 AMR 250).

[26] On this Court's instruction during the hearing of the application, the Plaintiff provided this Court for its examination, viewing and scrutinisation one item that formed part of the Defendant's Infringing Product, namely a
255 machete ("Defendant's Infringing Machete"). For purposes of comparison, a machete which physically matched the Defendant's Infringing Machete that was produced by the Plaintiff was also provided for this Court's examination and viewing.

260 [27] Having carried out physical and visual viewing and examination of the Defendant's Infringing Machete and comparing it with the Plaintiff's machete, my first finding was that the Defendant's Infringing Machete has the traits and characteristics, and physical, material and corporeal outlook which are almost similar with those of the Plaintiff's machete. I found particularly the
265 colour, design and dimension of both items are almost similar. The handle colour, design and shape of the handle for both items are also almost similar.

[28] My second, and more important, findings comprise the following:

- (i) although the word "TRAMWTA" appearing in the largest font on the Defendant's Infringing Machete, which purports to be the brand name of the said machete, there is another mark which appears on the immediate left of that word "TRAMWTA", as shown in blue arrow in the picture below:



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That mark as shown in blue arrow above consist the mark



which I found to be identical to a part of the Plaintiff's trademark no. 08016259 as shown below:



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The Defendant had raised in its affidavit that the said trademark no. 08016259 is not registered in the Plaintiff's name but one Redman Hardware Sdn. Bhd. In its affidavit in reply the Plaintiff admitted that this trademark was originally registered in Redman Hardware's name but had since been assigned to the Plaintiff. This is evident when the Plaintiff's name appeared as the applicant for the extension period of this trademark. (See exhibit GD-7 to the Plaintiff's Affidavit in Enclosure 47 at p. 14). This Court accepted the Plaintiff's evidence.

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- (ii) Below the word "TRAMWTA" is a mark as shown in the blue arrow below:



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That mark is almost similar with the Plaintiff's trademark bearing registration no. 904393160 in Class 8 that was deposited at the Branding, Industrial Designs and Geographical Indications Board, Brazil, as below:



(iii) The marks "TRAWONTINA", "TRAMONTINA", the phrase
300 "LAMINA EM ACO CARBONO, CARBON STEEL BLADE,
TRAMONTINA S.A. CUTELARIA", and a sticker bearing the
complete address of the Plaintiff are all appearing on various parts
of the main body of the Defendant's Infringing Machete.

305 (iv) On the plastic sheet that wrapped the Defendant's Infringing Machete, I found a bar code white sticker with the words 'TRAMONT INA BRAZIL KNIFE 18". These details correspond with the details found on the receipt obtained by the Plaintiff during the trap purchase of the Defendant's Infringing Machete as exhibited in GD-6, as shown earlier.

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[29] Having compared the marks as a whole, in particular taking into account the look, distinguishing and essential features, and the nature of the goods and the customers that would purchase the Plaintiff's products and

315 the Defendant's Infringing Products, I am satisfied that the Plaintiff had successfully proven that the marks as found on the Defendant's Infringing Products and the Defendant's Infringing Machete are identical with or so nearly resembling the Plaintiff's registered trademarks and marks and would

likely cause confusion (See: **Tohtonku Sdn Bhd v Superace (M) Sdn Bhd**

320 [1992] 2 MLJ 63, **Consitex SA v TCL Marketing Sdn Bhd (supra)**).

[30] This Court concluded that as the Plaintiff's case is premised on s. 38 of the TMA 1976, the Plaintiff had fulfilled the requisite ingredients to establish that the Defendant had infringed the Plaintiff's trademarks as laid down in paragraph 38(1)(a) of the TMA 1976 as follows:

- (a) The Defendant used a mark identical with or so nearly resembling the Plaintiff's trade mark as it is likely to deceive or cause confusion;
- (b) The Defendant is not the registered proprietor nor the registered user of the trade mark used on the Defendant's Infringing Products;
- (c) The Defendant was using the offending trade mark in the course of trade;
- (d) The Defendant was using the offending trade mark in relation to goods or services within the scope of the registration of the Plaintiff's trademarks; and
- (e) The Defendant used the offending mark in such a manner as to render the use likely to be taken as being use as a trade mark or as importing a reference to the Plaintiff who is the registered

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proprietor of the trademarks and user of the other marks found on
the said Defendant's Infringing Products, or to the Plaintiff's goods
or services.

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(See : ***Fabrique Ebel Societe Anonyme v Syarikat Perniagaan Tukang Jam City Port & Ors [1988] 1 MLJ 188; Syarikat Wing Heong Meat Product Sdn Bhd v Wing Heong Food Industries Sdn Bhd & Ors [2010] 7 AMR 357; [2010] 7 MLJ 504; Low Chi Yong v Low Chi Hong & Anor [2017] MLJU 1704***)

Passing Off

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[31] In the celebrated decision of the House of Lords of ***Erven Warnink BV v Townend & Sons (Hull) Ltd [1980] RPC 31***, Lord Diplock spelt out the five elements of passing off action in the following sequence-

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- (a) misrepresentation,
- (b) made by a trader in the course of a trade,
- (c) to prospective customers of his or ultimate consumers of goods or services supplied by him,
- (d) which is calculated to injure the business or goodwill of another trader, and

(e) which causes actual damage to a business or goodwill of the trader

360 whom the action is brought.

[32] Lord Diplock's formulation was endorsed in a subsequent decision of

the House of Lords of ***Reckitt & Colman Products v Borden Inc [1990] 1***

All ER 873, where those five elements were paraphrased and reduced to

365 three key elements namely goodwill, misrepresentation and damage (see:

Tay Pek San, Intellectual Property Law in Malaysia, Sweet & Maxwell

Asia, 2013). The above principle has been followed and applied with

approval in a plethora of decisions by Malaysian Court (See: ***Goodyear Tire***

& Rubber Company & Anor v Silverstone Tire & Rubber Co Sdn Bhd

370 ***[1993] 2 AMR 3538; [1994] 1 MLJ 348, Danone Biscuits Manufacturing***

(M) Sdn Bhd v Hwa Tai Industries Bhd [2010] 4 CLJ 711.

[33] The Defendant argued that thus far the Plaintiff had only showed that

the Plaintiff's products had acquired reputation and goodwill in Brazil. As the

375 Plaintiff has no physical store in Malaysia, without any signs and

advertisements of the Plaintiff's products in Malaysia, no Malaysian

consumer would have known the Plaintiff products and it follows it has no

goodwill here in Malaysia. This Court does not accept the Defendant's

argument as the law does not require the existence of a physical store, signs
380 or advertisements as a prerequisite of one's goodwill. On the contrary, this Court accepts the Plaintiff's evidence by way of receipts in exhibits GD-4 and GD5 which showed transactions in Malaysia involving the Plaintiff's products within a span of 9 years (2011-2020), and the use of the Plaintiff's trademarks and its other marks in Malaysia. This Court concluded that the
385 by the Plaintiff had acquired goodwill and reputation in Malaysia in respect of its trademarks.

[34] It is this Court finding that the Plaintiff had established the Defendant's conduct of falsely representing the Plaintiff's trademarks and marks as the
390 Defendant's. The misrepresentation by the Defendant is implied in its use of the Plaintiff's trademarks and marks : **Syarikat Zamani Hj Tamin Sdn Bhd v Yong Sze Fun & Anor [2006] 5 MLJ 262**. The blatant use of the Plaintiff's address on the Defendant's Infringing Machete in itself tantamount to misrepresentation, as this led the public or consumer to believe the
395 machetes offered by the Defendant are of the Plaintiff's: **Jasmine Food Corp Sdn Bhd v Leong Wai Choon & Anor [2016] 11 MLJ 812**.

[35] Having found that the Defendant had committed the act of infringement, this Court further concluded that the Plaintiff had suffered damage, without the need to prove actual damage but suffice to show that it had suffered probable damage : ***Yong Sze Fun & Anor v Syarikat Zamani Hj Tamin Sdn Bhd & Anor [2012] 1 MLJ 585***, citing with approval ***HP Bulmer Ltd and Showerings Ltd v Bollinger SA and Champagne Lanson Pere Et Fils [1978] RPC 79.***

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The law governing O.14 application

[36] Besides citing the trite principles governing an O.14 application as laid down by the Federal Court in its oft-cited decision of ***Cempaka Finance Bhd v Ho Lai Ying & Anor [2006] 3 CLJ 544***, the Plaintiff's counsel submitted that this Court should be hasty in allowing the Plaintiff's summary judgement application as it has presented a plain and obvious case where the Plaintiff has provided an irrefutable evidence that it is the registered proprietor of the impugned DEKA trademark, see: High Court decisions in ***Fabrique Ebel Anonyme v Syarikat Perniagaan Tukang Jam City Port & Ors [1989] 1 CLJ (Rep) 537, Acushnet Company v Metro Golf Manufacturing Sdn***

Bhd [2006] 7 CLJ 557, and **Mutiara Rini Sdn Bhd v The Corum View Hotel Sdn Bhd [2016] 7 MLJ 771.**

420 [37] It is well established and already settled law that once an O. 14 application is demonstrated to be correctly and properly filed, the burden shifts and thus rests on the other party who seeks to resist the application to raise a defence which shows a "*bona fide* triable issue", in the sense of an issue which justifies and warrants the matter to be considered at the trial
425 proper.

[38] This is entirely in keeping with the requirements of O.14 r.3 of the ROC 2012, which essentially means that unless the Defendant satisfies the Court with respect to the claim, or part of a claim, to which the application relates
430 that-

- (a) there is an issue or question in dispute which ought to be tried; or
- (b) there ought for some other reason to be a trial of that claim or part,

this Court may give such judgment for the Plaintiff on that claim or part as may be just having regard to the nature of the remedy or relied claimed :

435 **National Company For Foreign Trade v. Kayu Raya Sdn Bhd [1984] 1 CLJ Rep 283; [1984] 2 CLJ 220; [1984] 2 MLJ 300.**

[39] The proposition in **National Company For Foreign Trade (supra)** was reaffirmed and elaborated further in another judgment of the former 440 Supreme Court in **Bank Negara Malaysia v. Mohd Ismail & Ors [1992] 2 CLJ Rep 186; [1992] 1 CLJ 653; [1992] 1 MLJ 400** where it was held that upon having satisfied that the O.14 applicant has fulfilled the preliminary requirements, the Court should then turn its focus on the respondent to examine, through the affidavit evidence, that the respondent's defence has 445 not only raised an issue, but also that the said issue is triable. The Supreme Court elucidated that the determination of whether an issue is or is not triable depends on the facts or the law arising from each case as disclosed in the affidavit evidence before the court. There is no necessity for a complete defence be shown. Instead, the defence need only show that there is a triable 450 issue.

[40] Applying those authorities, I am satisfied that the Plaintiff has established a *prima facie* case as I found that its Statement of Claim has been served on the Defendant, the Defendant has entered its appearance, 455 and the affidavit in support of the application complied with the requirements of O.14 r.2 of the ROC 2012.

[41] The burden then shifted to the Defendant to satisfy the Court why judgment should not be given against it. At this point this Court has to be 460 satisfied on affidavit evidence that the defence has not merely raised an issue, but triable issue. How do I determine whether an issue raised by the Defendant is or is not triable? The authorities that I had cited clearly instructed me to make such determination based on the facts or the law arising in this case as disclosed in the affidavit evidence before this Court.

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[42] Triable issues means issues raised by the Defendant must be fit to be tried and does not include denial in a defence nor a mere bare assertion. This Court shall look at the whole scenario, and having considered the evidence available, would finally ascertain whether the Defendant has a real

470 or *bona fide* defence : ***Abercrombie & Fitch Co & Anor v Fashion Factory Outlet KL Sdn Bhd & Ors [2008] 4 MLJ 127, Renofac Builder (M) Sdn Bhd v Chase Perdana Bhd [2000] MLJU 752.***

475 [43] I was satisfied that the issues raised by the Defendant based on its affidavit, and as I had enumerated briefly in the preceding paragraphs, comprised assertion, denial and dispute which lack in precision, inconsistent with undisputed contemporary documents, and is inherently improbable in itself.

480 [44] The issues raised by the Defendant as enumerated in paragraph 17 above do not fall squarely within the meaning of triable issues as explained in ***Bank Negara Malaysia v. Mohd Ismail & Ors (supra)***. I found the issues raised by the Defendant are mere bare assertions not supported by any evidence. No single document had been adduced by the Defendant in support of the averments in its affidavits: see ***Chen Heng Ping @ Tian Seow Hock & Ors v Intradagang Merchant Bankers (M) Bhd [1995] 2 MLJ 363, Jasmine Food Co Sdn Bhd v Leong Wai Choon & Anor [2016] 11 MLJ***

812. I am satisfied that the Defendant has not raised any issue which merits a trial. In fact, to quote Blackburn J in the celebrated case of **Gillette UK Ltd & Anor v Edenwest Ltd [1994] RPC 279**: "nothing would be gained by allowing the matter to go to trial".
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CONCLUSION

495 [45] Having considered the evidence before me and the submissions of the counsels of both parties, and having satisfied that the Plaintiff had fulfilled the applicable legal thresholds to proof trademark infringement and the tort of passing off, and that the Plaintiff had also satisfied this Court that it had fully complied with the laws and requirements governing an O.14 application,
500 I am satisfied beyond doubt that it would be just for this Court to make a final determination of the Plaintiff's claims without having the benefit of hearing evidence from witnesses, including evidence and/or reports of expert witnesses, and access to documentary evidence at a full trial. I am satisfied that the Plaintiff had, on the balance of probabilities, successfully proven its
505 case and claims against the Defendant.

[46] Based on the above considerations, I allowed the Plaintiff's enclosure 43, except paragraph 12 therein on pre-judgment interest. I had further ordered for the quantum for the Aggravated and/or Exemplary Damages shall be quantified and determined at an inquiry.

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DATED 31 JULY 2021



(MOHD RADZI BIN HARUN)

Judge

High Court (Commercial Division (Intellectual Property))
Kuala Lumpur

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